



STATE BOARD OF EQUALIZATION

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July 8, 1991

Re: Assessment Appeals Board Puling Review

In your letter of June 25, 1991 to Richard H. Ochsner, Assistant Chief Counsel, you asked us to review the legality of a recent ruling of the County Assessment Appeals Board. In their ruling the Board decided in favor of the applicant on the question of what was the appropriate amount of property to allocate to a homesite on a parcel under a Land Conservation Act contract. Of the 10 acre parcel the assessor's judgment was to allocate 5 acres to homesite predicated on the market conditions of the immediate area. The Board reduced the homesite area to 1/2 acre and increased the equine buiness use to 9 1/2 acres.

In a memorandum dated January 28, 1991 to the clerk of the Board you advised that reference should be made to the county counsel for an opinion as to whether this appeal was within the statutory jurisdiction of the Board. In response the county counsel issued an opinion dated June 11, 1991 in which it was concluded that the Board does have such jurisdiction. We agree.

Intially I should point out that the California Attorney General has opined that in the first instance a board has the jurisdiction to determine its own jurisdiction, 59 Ops. California Attorney General 182 (1976). Acting with this right and the advice of counsel to proceed on the matter is strong support for the Board's decision to hear the appeal. On the other hand we have found no explicit statutory mandate that authorizes such action by the Board. California Constitution, Article XIII, Sections 8 and 16, Revenue and Taxation Code, Part 3. Equalization, Government Code, Chapter 7 Agricultural Land, and Property Tax Rule 302, 18 C.C.R 302 are all silent on the specific question.

The county counsel relied on various appellate court decisions to progress from the Board's power to equalize, to act on matters of law and to change assessments. Ultimately the county

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counsel concluded that issue was one of "classification" whether the property was homesite or whether it was put to agricultural use, and a considerable body of case law supports the Board's power to rule on the classification of property.

We would also add that the California Constitution, per se, Article XIII, Section 8, describes the qualifying use as an "enforceable restriction" and it is well settled that the board is required to take into account appropriate enforceable restrictions when reviewing the assessor's valuations, see Meyers v. Co. of Alameda, 70 cal. App 3d 799 and Carlson v. Assessment appeals Board, 167 cal. App 3d 1004.

In the seminal case to construe the meaning of Williamson Act Provision, County of Marin v. Assessment Appeals Board, 64 Cal. App 3d 319, the appellate court notes this procedural sequence:

This determination by the assessor resulted in a substantial increase in the assessment of the lands. In pursuit of a remedy, the taxpayers filed an application with the board, contending that the parcels provided for in the Agreements were entitled to be valued as agricultural lands subject to enforceable restrictions within the meaning of the constitutional and statutory provisions. After a hearing and taking evidence, the Board found for the taxpayers and held that the Agreements were valid and that the parcels at issue were entitled to preferential assessments as agricultural land subject to enforceable restrictions. In accordance therewith, the Board ordered a reduction in the assessment of the properties in dispute. In this action brought by appellants for administrative mandamus and declaratory relief, the trial court upheld the decision of the board. (at page 323)

The trial court was affirmed by the court of appeal. In a more recent decision, Borel v. Contra Costa County, 220 Cal. App 3d 521 91990) the appellate court again upheld the authority of the Board to rule on the eligibility of property for agricultural preserve status. With these cases on point it seems clear that the Board has been correctly advised by the county counsel.

Very truly yours,
(signed by author)

James M. Williams
Tax Counsel

JMW:jd/3958H

Cc: Mr. John Hagerty